MANAGING RISK AT THE PRE-TENDER STAGES OF YOUR CONSTRUCTION PROJECT

Practical Tools and Solutions for Overcoming Challenges and Avoiding Liability

Gain valuable, practical information from an outstanding faculty of construction industry professionals and experts on:

- LEARNING what bonding and insurance factors should be considered at the pre-tender stage
- EXPLORING how to use the pre-qualification process for your construction project to your advantage
- COMPARING traditional and electronic bid advertising methods during calls for tenders
- STRATEGIES for drafting a comprehensive scope of work
- BEST PRACTICES for successful communications between owners and bidders
- And much more!

PLUS! Gain additional value by attending the post-conference workshop on September 25, 2008:
Putting Together a Comprehensive and Winning Tender Package

Sponsored by: WeirFoulds LLP

CONференц CO-CHAIRS:

Glenn Ackerley
Partner
WeirFoulds LLP

L. Brian Swartz
Senior Vice President,
Legal and Commercial
Aecon Group Inc.

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The construction industry is constantly growing and it is crucial to know how to overcome complications from the initial stages of a construction project. Everyone involved in a construction project needs to be aware of the difficulties that can arise at the pre-tender stages. If you are not aware of the steps to take to avoid issues that can arise, your company may become entangled in costly litigation, experience economic loss and/or suffer from project delays.

At The Canadian Institute’s Managing Risk at the Pre-Tender Stages of Your Construction Project conference you will learn practical strategies to protect your company from litigation and avoid project delays and economic loss. Leading construction industry professionals and experts will share their wide-ranging knowledge on matters of importance to you, including:

- Examining procurement challenges that arise at the pre-tender stage
- Best practices for managing risk in the early stages of your construction project
- Demystifying recent case law concerning owners’ obligations and subcontractor issues in the pre-tender stage
- Exploring how to secure projects through the process of negotiated work
- Top tips to ensure bidders and owners communicate successfully at the pre-tender stages

Plus! Add value to your attendance by participating in our post-conference workshop on “Putting Together a Comprehensive and Winning Tender Package”.

Don’t delay! Spaces are limited. You can register by calling The Canadian Institute toll-free at 1-877-927-7936, faxing the registration form to 1-877-927-1563, or registering online at www.CanadianInstitute.com
8:00 Registration Opens and Coffee Served

9:00 Opening Remarks from the Co-Chairs

Glenn Ackerley
Partner, WeirFoulds LLP

L. Brian Swartz
Senior Vice President, Legal and Commercial
Aecon Group Inc.

9:15 Defining and Understanding Your Project: Strategies for Scoping

Chris Campbell
Senior Buyer, Facility Property Management & Community Services, City of Mississauga

Marlene Knight
Procurement Manager, City of Mississauga

The scoping, or initial, stage of a project is a crucial stage in construction. If you are unable to properly define, schedule and understand your construction project, you are setting yourself up for difficulties and potential risks at later stages, including the potential for receiving incomplete bids or bids that are too high or too low. This session will help you identify the issues that you should explore and understand at the initial stages of a construction project.

- Understanding how to properly define and set up a project: questions to ask and answer in the early stages
- Grasping the consequences of overestimating or underestimating your requirements
- What kind of information should tradespeople provide?
- What are the consequences of not fully scoping and defining your project?
- Should purchasing professionals be involved in the early stages of scoping a project?
- Recognizing the differences between new projects and renovations to existing structures
- Top tips for creating a scoping checklist

10:15 Utilizing the Pre-Qualification Process at the Pre-Tender Stage

Howard Wise
Partner, Goodmans LLP

Jim Ilkay
President & CEO, Econstruction

- When should pre-qualification be used and why?
- Examining the benefits of pre-qualification: securing the right vendors and taking advantage of a shorter timeframe
- Avoiding the legal traps of pre-qualification
- Exploring the drawbacks of pre-qualification: eliminating competition
- What are owners looking for during the pre-qualification process?
  - what documents should be provided?
- How should the pre-qualification process be carried out: strategies for a fair and successful pre-qualification period
- Fairness of process: managing complaints
- Why is it important to establish criteria for pre-qualification?
  - tips for judging all contenders objectively
  - strategies for analyzing prior project experience of vendors: what is prior experience?

11:15 Networking Refreshment Break

11:30 Calls for Tenders: Making the Most of Traditional and Electronic Bid Advertisements

John Mollenbauer
President & CEO, Toronto Construction Association

Kim McKinney
Executive Vice-President, Toronto Construction Association

- How can owners ensure that they advertise to the correct marketplace?
- why is it important to understand the marketplace for vendors and contractors?
- Strategies for creating clear advertisements for bidders
- Traditional versus electronic advertising: which method of marketing a project is more effective and efficient?
  - exploring traditional methods of advertising
  - examining electronic bid advertising sites: MERX and Electronic Plans Room
  - what are the drawbacks of electronic bid sites?
  - what does the future hold for electronic bid advertising?
- Overcoming challenges: what should be done when owners forget to advertise to incumbent bidders?
- Bidder databases: are they useful and when should they be utilized?
- Are reverse auctions the way of the future or a curse?

12:15 Networking Luncheon for Delegates and Speakers

1:30 Exploring Challenges in Procurement at the Pre-Tender Stage

Rocco M. Sebastiano
Partner, Osler, Hoskin & Harcourt LLP

Barbara Ellard
Manager, Generation Procurement, Ontario Power Authority

Kevin McGuinness
Counsel, Ontario Ministry of the Attorney General

- Avoiding the appearance of privileged access for some bidders
  - strategies for communicating with bidders at the pre-solicitation phase
- Examining lobby registration requirements
- Defining the mandatory requirements and specifications for tenders
  - ensuring the requirements are not too strict
  - tips for understanding and achieving your objectives
- How many rights can you reserve?
  - what is the impact of those rights on the formation of Contract A?
- Drafting front-end documentation: terms and conditions governing the tender
  - how to make the terms fair and/or realistic
- Hiring outside consultants at the pre-tender procurement stage
- will conflicts of interests arise in later stages if they are involved?
- Utilizing legal counsel at the pre-tender procurement stage
  - getting advice on process issues
- Exploring the advantages of involving fairness commissioners
  - what is the proper role for a fairness commissioner?
  - utilizing the commissioners as advisors in designing the requirements and the process of the tender
- Best practices for involving legal counsel, fairness commissioners and consultants in the procurement and purchasing stage

2:45 Networking Refreshment Break

3:00 Case Study: Navigating Through the Procurement Minefield

Judy Wilson
Partner, Blake, Cassels & Graydon LLP

Darrell Lopushinsky
Senior Litigation Counsel, City of Edmonton

The procurement process has become increasingly more complex, particularly with recent demands for more transparency, accountability and budget constraints. Mistakes made in the procurement process can lead to economic loss and/or litigation. Learn practical strategies to traverse the procurement process and avoid unnecessary costs.

10:15 Identifying and Securing the Appropriate Bonding or Insurance Products

Steven D. Ness
President, Surety Association of Canada

Brian Hall
CEO, Jones DesLauriers Insurance Management Inc.

Sabrina Gherbaz
Partner, Torys LLP

- Why should bonding and insurance issues be considered at the pre-tender stage?
- Why is bonding required?
- Insurance products versus bonds: which is better for your project?
- How should you structure your insurance program: owner-controlled insurance program versus contractor-maintained insurance
  - how will this decision impact the bids?
- What to look for when getting insurance: what does it cost and is it worth the cost?
- What issues should be considered at the pre-tender stage?
  - how will performance be secured?
  - choosing the amount of the bond
  - examining onerous contract conditions
  - avoiding conditions that won't get bonded
  - strategies to ensure that bidders are not scared away
  - creating balance in the contract: bond wording
- Bonds versus letters of credit: which should be used?
  - what are the benefits of letters of credits?
  - examining costs issues with letters of credits
- Will the sub-prime crisis have an impact on construction bonding?

11:15 Networking Refreshment Break

11:30 Case Study: Managing Risk in all Aspects of the Pre-Tender Stage

Paul Sandori
Senior Consultant, Revay & Associates Ltd.

Carlo Greco
Partner, Osler, Hoskin & Harcourt LLP

It is crucial for all parties involved in a construction project to know how to identify risks and take the necessary steps to minimize and manage risk from the initial stages of a project. Poor management of risk can lead to large economic losses and/or costly and lengthy litigation. This session will provide practical examples for coping with and overcoming risks that arise at the pre-tender stages of a project.
12:30 Networking Luncheon for Delegates and Speakers

1:45 Lessons Learned: Case Law Update on the Pre-Tender Stage

Roger Gillott
Partner, Osler, Hoskin & Harcourt LLP

Many cases which end up in the courts stem from mistakes made in tendering the construction project. In many instances, these mistakes could have been addressed or overcome at the pre-tender stage, thereby avoiding liability in the future. This session will examine recent cases in Canada and provide practical tips for dealing with liability issues at the initial stages of a construction project.

• Tips for defining an owner's obligations in the calls for tender to avoid later liability: the impact of Double N Earthmovers v. Edmonton (City)
  - defining the duty to investigate bids to ensure compliance with tender specifications
  - is there a duty to insist that tender specifications be adhered to in the construction contract?
  - can the tender address allegations of “bid shopping”?
  - defining the duty of fairness to bidders.
• Revisiting Double N Earthmovers one year later: how have the courts applied the ruling and how can the tender documents respond?
  - Cityscape Contracting Ltd. v. Edmonton (City): looking behind the bid
  - Continental Steel Ltd. v. Mierau Contractors Ltd.: litigation history and the duty to investigate
  - Chandos Construction Ltd. v. Alberta (Minister of Infrastructure): examining the issue of bid repair
• What subcontractor issues should be addressed at the pre-tender stage to avoid complications later in the project? Exploring Design Services Ltd. v. Canada
• Demystifying the exclusion of liability clauses: how much protection do they offer for owners?
  - what is the effect Tercon Contractors Ltd. v. B.C. (Min. of Transportation)?

2:30 Networking Refreshment Break

2:45 Best Practices for Securing Projects Through Negotiated Work

Chris Davis
Manager, Contract Services, Defence Construction Canada

Paul Emanuelli
Counsel, Ontario Ministry of the Attorney General

• Utilizing negotiations to eliminate the tender process: what are the benefits and disadvantages?
• Addressing the risks of contract law: does negotiated work eliminate tendering law constraints?
• Exploring the importance of marketing your firm and connecting with owners: building relationships that could lead to future projects
• Understanding the importance of verifying prices
  - setting up independent panels of experts and other methods of comparing prices in the marketplace
• Tips for ensuring a fair rotation among vendors
• Best practices for successful negotiations between owners and vendors
  - what terms can be negotiated?

3:45 Co-Chairs’ Closing Remarks
Conference Concludes

POST-CONFERENCE WORKSHOP
THURSDAY, SEPTEMBER 25, 2008
9:00 A.M. – 12:00 P.M.

Putting Together a Comprehensive and Winning Tender Package

Lisa Bate
Partner, Bregman + Hamann Architects

Matthew Gazzola
Development Director, Real Estate Division, Manulife Financial

This comprehensive hands-on workshop has been designed to provide you with the tools and knowledge to put together a comprehensive and winning tender package.

Topics that will be covered at this must-attend workshop include:

• Top tips for drafting tender documents
  - what should be included and what should be left out?
  - how important is the level of detail?
• Strategies for successful coordination and collaboration between everyone involved in preparing the tender package
• Avoiding legal traps in preparing tenders
• Exploring the importance of obtaining current estimates for tender packages
• What is the significance of documentation control?
  - how can documentation control be achieved?
• Identifying different requirements for tender packages among regions in Ontario
• Comparing the requirements among tender packages for federal, municipal and private owners
• Understanding the benefits and drawbacks of electronic tendering
  - what are the legal ramifications?
  - what are the security concerns?
  - is electronic tendering more efficient and cost-effective?
  - is this process beneficial to out-of-town bidders?

This program has been accredited by the Law Society of Upper Canada towards the professional development requirement for certification.

Conference: Construction Law 10 hours
Post-Conference Workshop: Municipal Law 3 hours

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REGISTRATION FORM

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MANAGING RISK AT THE PRE-TENDER STAGES OF YOUR CONSTRUCTION PROJECT

FEE PER DELEGATE
☐ Conference Only $1895 + 5% GST = $1989.75
☐ Conference & Workshop $2390 + 5% GST = $2509.50
☐ Conference Only $2095 + 5% GST = $2199.75
☐ Conference & Workshop $2590 + 5% GST = $2719.50

☐ I am attending, please add the conference materials CD-ROM to my order $195 + $15.95 (S & H) (+ applicable taxes)

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Top Reasons to Attend

✓ Hear directly from the leading experts how to successfully navigate the pre-qualification process and other pre-tender stages
✓ Examine bonding and insurance issues that should be considered at the pre-tender stage
✓ Learn practical tips from case studies on procurement and risk management
✓ Network with industry professionals

ADMIRATIVE DETAILS
VENUE: Four Seasons Hotel
ADDRESS: 21 Avenue Road
TEL.: 416-964-0411
Hotel Reservations
For information on hotel room availability and reservations, please contact the Four Seasons Hotel at 416-964-0411. When making your reservation, please ask for "The Canadian Institute's Corporate Rate".

Program Materials
Conference participants will receive a comprehensive set of conference materials prepared by the speakers, as an excellent reference source after the conference. If you have paid and are unable to attend, the conference materials will be shipped to you upon request only. Request must be received within 30 days upon conclusion of the conference.

Payment Policy
Payment must be received in full by the conference date. All discounts will be applied to the Conference Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization.

Cancellation and Refund Policy
Substitution of participants is permissible without prior notification. If you are unable to find a substitute, please notify The Canadian Institute in writing no later than 10 days prior to the conference date and a credit voucher will be issued to you for the full amount paid. Credit Vouchers are valid for 1 year and are redeemable against any other Canadian Institute conference. If you prefer, you may request a refund of fees paid less a 25% service charge. No credits or refunds will be given for cancellations received after 10 days prior to the conference date. The Canadian Institute reserves the right to cancel any conference due to insufficient attendance. In such event, the conference will be cancelled and all registrants will be notified at least one week prior to the conference date. No credits or refunds will be made for cancellations received after 10 days prior to the conference date.

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